

## EXHIBIT E

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Attorneys for Defendants Merrill Lynch & Co., Inc., and  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

<p>GRAHAM NELSON, individually and on behalf of all others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- against -</p> <p>MERRILL LYNCH &amp; CO, INC., a corporation and MERRILL LYNCH, PIERCE, FENNER &amp; SMITH INCORPORATED,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civ. No. 05-7630 (JSR)</p> <p><b><u>STIPULATION AND</u></b> <b><u>PROPOSED ORDER OF</u></b> <b><u>DISMISSAL PURSUANT TO</u></b> <b><u>FRCP 41(a)</u></b></p>
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WHEREAS, Plaintiff Graham Nelson ("Plaintiff") has filed this putative collective action and putative class action, and no other plaintiffs have opted into the action;

WHEREAS, Defendants Merrill Lynch & Co., Inc., and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") have answered the complaint and denied the material allegations;

WHEREAS, the parties have commenced discovery, and the Court has set a case management schedule and trial date for this case;

WHEREAS, no class has been certified in this case;

WHEREAS, Plaintiff has stated his desire to dismiss the action with prejudice to his own claims but without any preclusive effect on putative class members;

WHEREAS, Merrill Lynch has stated to the Court and Plaintiff its concern that this dismissal may be an effort to engage in, or may lead to an effort at, forum or judge shopping by putative class members or their counsel, and may result in judicial inefficiency if another similar action is filed;

WHEREAS, there is sufficient basis to believe another action by another plaintiff making similar claims on behalf of a similar class in New York could be a related case, and therefore should be assigned to the same judge pursuant to Local Rule 1.6, 28 U.S.C. § 1404, and/or Rule 4(b) and Rule 15 of the Rules for the Division of Business Among District Judges;

WHEREAS, Merrill Lynch therefore opposes Plaintiff's request for a dismissal with prejudice of this matter without any associated terms and conditions to address the concerns Merrill Lynch has raised to the Court;

WHEREAS, Plaintiff and his counsel are agreeable to terms and conditions imposed by the Court on the dismissal to address these issues, and the parties, through their counsel of record, agree to the entry of the following order:

The above-captioned action is hereby dismissed. This dismissal is with prejudice with regard to Plaintiff only. Notwithstanding the foregoing, to the extent another action is filed in or removed to a federal court in New York against Merrill Lynch or any of its affiliates asserting similar claims on behalf of a similar proposed class, such action shall be filed before the undersigned judge or, upon filing, a notice of related case shall be filed so that the undersigned judge can consider a relation of the cases, or

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the judge assigned to the new action can transfer that case to the undersigned judge for his consideration.

Respectfully Submitted,

Dated: 3/24/06

McINERNEY & JONES

By: 

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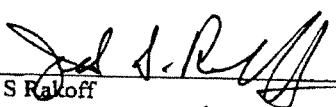
Dated: 3/27/06

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and Merrill Lynch, Pierce, Fenner & Smith  
Incorporated

IT IS SO ORDERED. THE CASE IS DISMISSED SUBJECT TO THE ABOVE TERMS.

  
Jed. S Rakoff  
U.S.D.J.

3/30/06